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FEB 4 1972 4 35 PM

INTERSTATE COMMERCE COMMISSION

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
EQUIPMENT TRUST**

Series 56

EQUIPMENT TRUST AGREEMENT

Dated as of February 1, 1972

by and between

**THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY,
*Trustee***

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

TABLE OF CONTENTS*

	PAGE
PARTIES	1
RECITALS AND FORMS	1
CONSIDERATION FOR AGREEMENT	5

ARTICLE ONE

DEFINITIONS

SECTION 1.01. Definitions	5
Affiliate	5
Agency of the Trustee.....	6
Casualty Occurrence	6
Company	6
Cost	6
Deposited Cash	6
Equipment	6
Event of Default	7
Fair Value	7
holder	7
Investment Securities	7
Officer's Certificate	7
Opinion of Counsel	7
Overdue Interest Rate	7
Request	7
Responsible Officer	8
Trust Certificates	8
Trust Equipment	8
Trustee	8
herein, hereof, hereby, hereto, hereunder	8

* This Table of Contents does not constitute a part of the Agreement.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

	PAGE
SECTION 2.01. Issuance of Trust Certificates	8
SECTION 2.02. Interests Represented by Trust Certificates; Dividends; Maturity; Denominations	9
SECTION 2.03. Forms of Trust Certificates and Guaranty	9
SECTION 2.04. Execution by Trustee	9
SECTION 2.05. Temporary Trust Certificates	10
SECTION 2.06. Characteristics of Trust Certificates	10
SECTION 2.07. Replacement of Trust Certificates	11

ARTICLE THREE

REDEMPTION OF TRUST CERTIFICATES

SECTION 3.01. Right of Redemption and Redemption Price	12
SECTION 3.02. Selection of Trust Certificates for Redemption; Notice of Redemption	12
SECTION 3.03. Payment of Trust Certificates Called for Redemption.....	13

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. Acquisition of Equipment by Trustee	14
SECTION 4.02. Payment of Deposited Cash	14
SECTION 4.03. Payment of Deficiency	15
SECTION 4.04. Supporting Papers	15

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. Lease of Trust Equipment	16
SECTION 5.02. Equipment Automatically Subjected	16
SECTION 5.03. Substituted Equipment Subject Hereto	16

	PAGE
SECTION 5.04. Rental Payments	17
SECTION 5.05. Termination of Lease	19
SECTION 5.06. Marking of Trust Equipment	20
SECTION 5.07. Maintenance of Trust Equipment	21
SECTION 5.08. Possession of Trust Equipment	22
SECTION 5.09. Indemnities	23

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. Events of Default	24
SECTION 6.02. Remedies	28
SECTION 6.03. Application of Proceeds	29
SECTION 6.04. Waivers of Default	30
SECTION 6.05. Obligations of Company Not Affected by Remedies	31
SECTION 6.06. Company to Deliver Trust Equipment to Trustee	31
SECTION 6.07. Limitations on Suits by Holders of Trust Certificates	32
SECTION 6.08. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.....	33
SECTION 6.09. Control by Holders of Trust Certificates	33
SECTION 6.10. Right of Court to Require Filing of Undertaking to Pay Costs	33
SECTION 6.11. Remedies Cumulative	34

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. Guaranty of Company	34
SECTION 7.02. Discharge of Liens	35
SECTION 7.03. Payment of Expenses; Recording	35

ARTICLE EIGHT

THE TRUSTEE

	PAGE
SECTION 8.01. Acceptance of Trusts	36
SECTION 8.02. Duties and Responsibilities of the Trustee ; During Default ; Prior to Default	36
SECTION 8.03. Certain Rights of the Trustee	37
SECTION 8.04. Application of Rentals ; Responsibility of Trustee to Insure or Record	38
SECTION 8.05. Funds May be Held by Trustee ; Investments in Investment Securities	38
SECTION 8.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title ; May Perform Duties by Agents ; Reimbursement of Expenses ; Holding of Trust Certifi- cates ; Moneys Held in Trust	39
SECTION 8.07. Resignation and Removal ; Appointment of Successor Trustee	41
SECTION 8.08. Acceptance of Appointment by Successor Trustee	42
SECTION 8.09. Merger or Consolidation of Trustee	43

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. Evidence of Action Taken by Holders of Trust Certificates	44
SECTION 9.02. Proof of Execution of Instruments and of Holding of Trust Certificates	44
SECTION 9.03. Trust Certificates Owned by Company Deemed Not Outstanding	44
SECTION 9.04. Right of Revocation of Action Taken	45

ARTICLE TEN

MISCELLANEOUS

SECTION 10.01. Rights Confined to Parties and Holders	45
SECTION 10.02. No Recourse	46

	PAGE
SECTION 10.03. Binding Upon Assigns.....	46
SECTION 10.04. Notices	46
SECTION 10.05. Effect of Headings.....	46
SECTION 10.06. Counterparts	46
SECTION 10.07. Date Executed	47
SECTION 10.08. Governing Law	47
TESTIMONIUM	47
SIGNATURES AND SEALS	47
ACKNOWLEDGMENTS	48
SCHEDULE A. DESCRIPTION OF TRUST EQUIPMENT.....	49

EQUIPMENT TRUST AGREEMENT dated as of February 1, 1972, by and between **THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY**, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and having its principal Corporate Trust Office at Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, as Trustee (hereinafter called the Trustee), and **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company).

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, Southern Pacific Transportation Company Equipment Trust Certificates, Series 56 (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$50,000,000, and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as **SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST**, Series 56, to be applied by the Trustee from time to time in part payment of the Cost of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[FORM OF TRUST CERTIFICATE]

No. R

\$

SOUTHERN PACIFIC TRANSPORTATION COMPANY
EQUIPMENT TRUST

SERIES 56

Equipment Trust Certificate
Total Authorized Issue \$50,000,000THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee
Dividends at the rate of % Per Annum
Payable February 1 and August 1,
Principal hereof payable February 1, 1987

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of February 1, 1972, by and between THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee, of the first part, and SOUTHERN PACIFIC TRANSPORTATION COMPANY (hereinafter called the Company), of the second part, hereby certifies that or registered assigns, is entitled to an interest in the principal amount of \$ in SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, Series 56, payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its agency in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), and to payment, until said last mentioned date, of dividends on said principal amount, semi-annually on February 1 and August 1 in each year, at the rate of % per annum from the date hereof, at said agency of the undersigned, with interest at the rate of % per annum on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates (hereinafter called Trust Certificates) in an aggregate principal amount not exceeding \$50,000,000, which will mature on February 1, 1987 (unless theretofore called for sinking fund redemption), all issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by the Trust Certificates, to which Agreement (a copy of which is on file with the undersigned at its said agency) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the registered holder hereof thereunder.

As a sinking fund for the Trust Certificates, the Agreement provides for the payment by the Company to the Trustee, on or before February 1 in each year, commencing February 1, 1978, and continuing to and including February 1, 1986, of additional rental in an amount sufficient to redeem \$4,500,000 aggregate principal amount of the Trust Certificates. In addition, on February 1, 1983, and on each February 1 thereafter to and including February 1, 1986, the Company may pay an additional rental in an amount sufficient to redeem such greater amount not exceeding \$4,500,000 aggregate principal amount of Trust Certificates as the Company may at its option specify in accordance with the Agreement. As more fully provided in the Agreement, the Trust Certificates are subject to redemption through the application of such additional rental on February 1, 1978, and on each February 1 thereafter to and including February 1, 1986, on not less than 30 nor more than 60 days' prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption. The Agreement further provides that the Company may, at its option, credit against such rental payment Trust Certificates not theretofore credited or redeemed, such credit to be in an amount equal to the redemption price (including accrued dividends) of such Trust Certificates.

The Trust Certificates are issuable as fully registered Trust Certificates in denominations of \$1,000 and any multiple of \$1,000. The several denominations of Trust Certificates are interchangeable upon presentation thereof for the purpose at said agency of the undersigned,

but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the undersigned at its said agency in the Borough of Manhattan, City and State of New York, upon surrender hereof to the undersigned at its said agency, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new fully registered Trust Certificate or Certificates in authorized denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor. The Trustee and the Company shall be entitled to treat the registered holder hereof as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement), the principal amount represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be valid or become obligatory for any purpose until it has been manually attested by the Secretary or one of the Assistant Secretaries of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of its President or one of its Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed and to be attested by the manual signature of its Secretary or one of its Assistant Secretaries, the day of , 19 .

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY,
Trustee,

By.....
Vice President

ATTEST:

.....
Assistant Secretary

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

SOUTHERN PACIFIC TRANSPORTATION COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate, and of dividends thereon at the dividend rate specified therein on the semi-annual dates specified in said Certificate, with interest at the rate of % per annum on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By
President

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof at maturity, whether by declaration or otherwise, with dividends to said date of maturity payable as provided therein, all as hereinafter provided, and to evidence the rights of the holders of the Trust Certificates;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of the Company shall mean any corporation, which, directly or indirectly, controls or is controlled by, or is under common control with, the Company. For the purposes of this definition, *control* (in-

cluding *controlled by and under common control with*), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise.

Agency of the Trustee means the agency of the Trustee in the Borough of Manhattan, City and State of New York, for the payment of principal of (including redemption) and dividends on the Trust Certificates and for the registration and registration of transfer of the Trust Certificates, which may be the office of the Company in the Borough of Manhattan, City and State of New York.

Casualty Occurrence shall mean any occurrence specified in Section 5.07 to be a Casualty Occurrence.

Company shall mean Southern Pacific Transportation Company and any successor or successors to it complying with the provisions of Section 5.08.

Cost, when used with respect to Equipment, shall mean the actual cost thereof, and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies as in effect at the time in question, or the accounting rules of such other Federal governmental authority as may then have jurisdiction over the accounts of the Company, or, to the extent not determined thereby or in case there shall be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, under generally accepted accounting principles.

Deposited Cash shall mean the aggregate of (a) cash and any advance rentals on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.05, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee.

Equipment shall mean standard-gauge railroad equipment (other than passenger or work equipment) first put into use on or after February 1, 1972.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The *Fair Value* of any unit of Equipment shall be considered to be the Cost thereof less depreciation accrued on such Equipment computed by the straight-line method at the rate of one third of one per cent of the Cost for each calendar month from the date the same was first put into operation to the date as of which the value is to be determined.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Investment Securities shall mean (a) bonds, notes or other direct obligations of the United States or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal thereon, (b) bonds, notes, debentures or other direct obligations of agencies of the United States Government, which obligations are legal for investment in the State of New York for commercial banks, savings banks, insurance companies and various fiduciary and trust funds, (c) bankers' acceptances which are eligible for purchase in the open market by Federal Reserve Banks, and (d) certificates of deposit or time deposits in banks or trust companies (including the Trustee) incorporated and doing business under the laws of the United States or one of the states thereof having a combined capital and surplus of at least \$50,000,000; in all cases having a maturity of one year or less.

Officer's Certificate shall mean a certificate signed by the President, a Vice President, the Treasurer or an Assistant Treasurer of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or counsel to the Company.

Overdue Interest Rate shall mean an interest rate on any overdue principal or dividend in an amount one percentage point higher than the dividend rate borne by the Trust Certificates.

Request shall mean a written request for the action therein specified, delivered to the Trustee and signed on behalf of the Company by the President, a Vice President, the Treasurer or an Assistant Treasurer of the Company.

Responsible Officer shall mean the chairman of the board of directors, any vice chairman of the board of directors, the chairman of the executive committee, the president, any vice president, the secretary, the treasurer, any trust officer, any assistant trust officer, any assistant vice president, any assistant secretary, any assistant treasurer or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

Trust Certificates shall mean the Southern Pacific Transportation Company Equipment Trust Certificates issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean the corporation designated as such in the first paragraph of this Agreement and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein*, *hereof*, *hereby*, *hereto*, *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The net proceeds (excluding accrued dividends and any premium, which shall be paid to the Company) of the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash with or to the credit of the Trustee. At the same time the Company shall, if necessary, deposit with or to the credit of the Trustee any advance rental payable by the Company under Section 5.04(A)(1).

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold, bearing dividends at the rate specified in such Request.

Except as provided in Sections 2.05, 2.06, 2.07 and 3.02, the aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$50,000,000.

SECTION 2.02. *Interests Represented by Trust Certificates; Dividends; Maturity; Denominations.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The Trust Certificates shall be payable as specified in the form thereof hereinbefore set forth and shall mature on the date therein specified. Definitive Trust Certificates shall be in denominations of \$1,000 and any multiple thereof.

The principal of and dividends on the Trust Certificates shall be payable at the Agency of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of this Agreement.

SECTION 2.03. *Forms of Trust Certificates and Guaranty.* The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 7.01 provided shall be in substantially the forms hereinbefore set forth. The definitive Trust Certificates shall be printed in fully engraved form or lithographed or printed with steel engraved borders or partially engraved and partially printed with steel engraved borders.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of its Secretary or one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered

as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Temporary Trust Certificates.* Temporary printed Trust Certificates in such form and denominations as the Company may determine with the approval of the Trustee may be issued by the Trustee, and shall be exchangeable, without charge to the holder thereof, upon surrender thereof to the Trustee, for definitive Trust Certificates. Until such exchange said temporary Trust Certificates shall be entitled to the same benefit of this Agreement in all respects as said definitive Trust Certificates.

SECTION 2.06. *Characteristics of Trust Certificates.* (a) The Trust Certificates shall be registered, as to both principal and dividends, in the name of the holder; shall be entitled to registration of transfer upon presentation and surrender thereof for registration of transfer at the Agency of the Trustee, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated as of February 1, 1972, or, if issued after August 1, 1972, as of the dividend payment date immediately preceding the date of issue, unless issued on a dividend payment date, in which case they shall be dated as of the date of issue, or unless issued in exchange or substitution for, or upon transfer of, another Trust Certificate or Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date, and in any case shall entitle the holder to dividends from the date hereof.

(b) The several denominations of Trust Certificates shall be interchangeable in authorized denominations at the Agency of the Trustee.

(c) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(d) The Trustee shall maintain an Agency of the Trustee and shall cause to be kept at the Agency of the Trustee books for the registration and registration of transfer of the Trust Certificates.

(e) For any registration of transfer or any exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(f) Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the registration of transfer of, the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to dividends accrued and unpaid, and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in dividends shall result from such exchange, substitution or registration of transfer.

(g) The Trustee shall not be required (i) to issue, register the transfer of or exchange any Trust Certificate for a period of 15 days immediately preceding any dividend payment date, or (ii) to issue, register the transfer of or exchange any Trust Certificate during a period of 15 days before any selection of Trust Certificates to be redeemed, or (iii) to register the transfer of or exchange any Trust Certificates called or being called for redemption in whole or in part.

SECTION 2.07. *Replacement of Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. In case of any

Trust Certificate which has matured, the Trustee may, instead of issuing a new Trust Certificate, pay the same without surrender thereof. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates.

ARTICLE THREE

REDEMPTION OF TRUST CERTIFICATES

SECTION 3.01. *Right of Redemption and Redemption Price.* The Trust Certificates are subject to redemption through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(4) and, to the extent specifically provided therein, Section 5.04(B)(3) on February 1, 1978, and on each February 1 thereafter to and including February 1, 1986, at a redemption price of 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption.

SECTION 3.02. *Selection of Trust Certificates for Redemption; Notice of Redemption.* On or before December 24, 1977, and on or before December 24 in each year thereafter to and including December 24, 1985, the Trustee shall select for redemption, in such manner as in its discretion it shall deem appropriate and fair (*provided, however*, that portions of Trust Certificates shall be selected only in multiples of \$1,000), a principal amount of Trust Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(B)(4) on or before the next succeeding February 1, subject to the provisions of the sentence immediately following Section 5.04(B)(5).

The Trustee shall mail by first class mail, postage prepaid, a notice of redemption not less than 30 nor more than 60 days prior to each redemption date to the holders of Trust Certificates so to be redeemed in whole or in part, at their last addresses as they appear upon the registry books. Failure to mail such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Trust Certificates. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder received such notice.

The notice of redemption shall specify the date for redemption and shall state that payment of the principal amount of the Trust Certificates or portions thereof to be redeemed (together with all accrued and unpaid dividends thereon) will be made (provided the Company has deposited the necessary cash for such redemption) at the Agency of the Trustee, upon presentation and surrender of such Trust Certificates, that accrued dividends to the date fixed for redemption will be paid as specified in said notice, and that from and after said date dividends thereon or on the portions thereof to be redeemed will cease to accrue. The notice of redemption shall also state the aggregate principal amount of Trust Certificates to be redeemed and the serial numbers thereof; and in case there shall have been selected as aforesaid less than the entire principal amount of any Trust Certificate, the notice shall identify the serial number of such Trust Certificate and the principal amount thereof called for redemption, and shall state that on and after the redemption date, upon surrender of such Trust Certificate, the holder will receive the redemption price in respect of the principal amount thereof called for redemption and, without charge, a new Trust Certificate for the principal amount thereof remaining unredeemed. The serial numbers of any Trust Certificates to be redeemed, required to be included in any such notice, may be stated in any one or more of the following ways: individually; in groups from one number to another number, both inclusive; in groups from one number to another number, both inclusive, except such as shall have been previously called for redemption or otherwise retired; or in such other manner as the Trustee shall deem appropriate.

SECTION 3.03. *Payment of Trust Certificates Called for Redemption.* The Company on or before the redemption date specified in the notice of redemption having deposited with the Trustee at the Agency of the Trustee an amount in cash sufficient to redeem all the Trust Certificates or portions thereof called for redemption, the Trust Certificates or portions thereof called for redemption shall become due and payable on such redemption date at the Agency of the Trustee, and from and after such redemption date dividends on such Trust Certificates or portions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefits of this Agreement, except to receive payment from the moneys reserved therefor in the hands of the Trustee or the Agency of the Trustee.

Except as provided in Section 3.02, all Trust Certificates redeemed and paid under this Article Three shall be cancelled by the Trustee and no Trust Certificates shall be issued hereunder in place thereof.

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company shall cause to be sold, assigned and transferred to the Trustee the Equipment described in Schedule A hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee or its agent or agents, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment. In the event of such substitution or addition the Trustee shall execute an appropriate supplemental instrument reflecting such substitution or addition.

SECTION 4.02. *Payment of Deposited Cash.* From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions of Section 4.03) pay, upon Request, to the manufacturers or owners of the delivered Trust Equipment out of Deposited Cash an amount not more than 80% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.04.

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to

Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(2), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02; the intention being that the Company shall ultimately pay not less than 20% of the final Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such Cost and the Company shall pay the remainder, to be not less than 20% of such Cost.

SECTION 4.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment has been delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 5.06 hereof;

(b) A bill or bills of sale of such Trust Equipment from the manufacturer or manufacturers thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances;

(c) An Opinion of Counsel that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances; and

(d) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto

in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 7.03 hereof.

Any Officer's Certificate delivered pursuant to this Section 4.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

If the aggregate final Cost, as specified in the certificates theretofore delivered to the Trustee pursuant to this Section 4.04, of the Trust Equipment delivered to the Trustee or its agent or agents pursuant to this Article Four shall be less than 125% of the aggregate principal amount of Trust Certificates issued pursuant to Section 2.01, the Company will cause to be sold, assigned and transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of said Trust Certificates.

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company, for the term of 15 years from and after February 1, 1972, all of the Trust Equipment.

SECTION 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, the same shall, without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. *Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01, 4.04 or 5.07, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to

all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Agency of the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America (or, in the case of taxes, in appropriate currency) as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee as advance rental hereunder, sums which in the aggregate shall be equal to the difference between the aggregate Cost of the Trust Equipment subjected hereto pursuant to Section 4.01 and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates, as follows:

(1) at the time of issue of Trust Certificates pursuant to Section 2.01, a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with or to the credit of the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates so issued; and

(2) upon delivery of any such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02, but not less than 20% of such Cost.

(B) In addition to such advance rental the Company shall pay to the Trustee, as hereinafter provided, as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) from time to time upon demand of the Trustee (a) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred in connection with any purchase or sale of Investment Securities or any loss incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including any premium and accrued interest;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(3) (a) on or before each dividend payment date, the amount of dividends payable on the Trust Certificates on such dividend payment date, and (b) interest at the Overdue Interest Rate from the due date upon the amount of any instalments of rental payable under this subparagraph (3) and the following subparagraphs (4) and (5) which shall not be paid when due, to the extent legally enforceable;

(4) as a sinking fund for the Trust Certificates, on or before February 1 in each year, commencing February 1, 1978, and continuing to and including February 1, 1986, an amount in cash sufficient to redeem \$4,500,000 aggregate principal amount of Trust Certificates. In addition, on February 1, 1983, and on each February 1 thereafter to and including February 1, 1986, the Company may pay additional rentals in an amount sufficient to redeem such greater amount, not exceeding the required sinking fund retirement for that year, of Trust Certificates as the Company shall specify in a Request to the Trustee at least 60 days prior to such February 1; and

(5) the principal of the Trust Certificates (other than those called for redemption and redeemed pursuant to Article Three) upon the maturity thereof, whether by declaration or otherwise.

Notwithstanding the provisions of subparagraph (4) above, the Company, at its option, in lieu of making all or any part of any rental payment provided for in said subparagraph (4) in cash, may credit, pursuant to a Request delivered on or before the December 1 next preceding

the February 1 on which such rental payment is due, against such rental payment any Trust Certificates specified (as to serial numbers and principal amounts thereof) in such Request (not theretofore credited or redeemed). The Company shall, prior to December 24 of the preceding year in which such rental payment is due, deliver to the Trustee for cancellation (if not theretofore delivered to the Trustee) all such Trust Certificates. The amount of the rental payment in respect of which the Company specifies in such Request that any Trust Certificate is to be credited shall be reduced by an amount equal to the redemption price (including accrued dividends), specified in Section 3.01, of such Trust Certificate on the February 1 in respect of which such credit is taken.

To the extent that the right of the Company to pay additional rentals pursuant to subparagraph (4) above is not exercised in any year, such right shall not be cumulative or carried forward to any subsequent year.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America or any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the Company shall have furnished the Trustee with an Opinion of Counsel to the effect that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby.

SECTION 5.05. *Termination of Lease.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) any moneys remaining in the hands of the Trustee after providing for payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (2) title to all the Trust Equipment shall vest in the Company and (3) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested

by the Company in order to make clear upon the public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however*, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 5.06. *Marking of Trust Equipment.* The Company agrees that, as soon as practicable after the delivery to the Trustee pursuant to this Agreement of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters, not less than one inch in height:

SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST,
SERIES 56, THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY,
TRUSTEE, OWNER AND LESSOR.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded in like manner as this Agreement.

The Trust Equipment may be lettered "SOUTHERN PACIFIC COMPANY", "SOUTHERN PACIFIC TRANSPORTATION COMPANY", "SOUTHERN PACIFIC SYSTEM", "SOUTHERN PACIFIC LINES", "SOUTHERN PACIFIC", "S.P.Co.", "S.P.", "EVERGREEN FREIGHT CAR CORPORATION", "EFCX", "PACIFIC FRUIT EXPRESS COMPANY", "PACIFIC FRUIT EXPRESS",

“P.F.E.”, “P.F.F.”, “S.P.F.E.”, or with the name or initials of any other Affiliate which is permitted to use the Trust Equipment as herein provided, or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein. The Trust Equipment may also be numbered for convenience of identification and bear identifying symbols and lettering of the Company and Union Pacific Railroad Company. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

SECTION 5.07. *Maintenance of Trust Equipment.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until it becomes worn out, unsuitable for use, lost or destroyed (herein called a *Casualty Occurrence*). Whenever any of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, promptly after it shall have obtained knowledge of such Casualty Occurrence, deliver to the Trustee an Officer’s Certificate describing such Trust Equipment and stating the Fair Value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. When the total Fair Value of all of the Trust Equipment having suffered a Casualty Occurrence (exclusive of Trust Equipment having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section 5.07) shall amount to \$100,000 (or such lesser amount as the Company may elect), the Company shall, promptly after it shall have obtained knowledge of the Casualty Occurrence requiring such deposit, (a) deposit with the Trustee an amount in cash equal to the Fair Value of such Trust Equipment as of the date of the Casualty Occurrence in respect thereof or (b) cause to be conveyed to the Trustee other Equipment of a Fair Value not less than the Fair Value as aforesaid of such Trust Equipment having suffered a Casualty Occurrence.

If other Equipment is to be conveyed to the Trustee in substitution for Trust Equipment having suffered a Casualty Occurrence as provided in the immediately preceding paragraph, the Company shall deliver to the Trustee the following papers: certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 4.04 hereof, and, in addition, an Officer’s Certificate describing such additional Equipment and stating the Cost and the then Fair Value thereof.

Upon the deposit of cash or substitution of Equipment as above provided in this Section 5.07, title to the Trust Equipment having suffered a Casualty Occurrence in respect of which such deposit or substitution was made shall become vested in the Company and, upon Request, the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to such Trust Equipment under the laws of any jurisdiction.

Cash deposited with the Trustee pursuant to this Section 5.07 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a Fair Value, as of the date of said Request, not less than the amount of cash so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.07 insofar as they relate to the action requested.

The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence.

The Company covenants and agrees to furnish to the Trustee whenever required by the Trustee, and at least once, on or before November 15 in every calendar year (commencing in 1972) during the continuance of the lease provided for herein, an Officer's Certificate stating (1) the amount, description and numbers of all Trust Equipment that has suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), and (2) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 5.06 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

SECTION 5.08. *Possession of Trust Equipment.* The Company, so long as it is not in default hereunder, shall be entitled to the posses-

sion of the Trust Equipment and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other carriers in the usual interchange of traffic and upon connecting and other carriers over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof except to Pacific Fruit Express Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, or to any Affiliate, in which case such assignment, transfer or sublease shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in this Section 5.08, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

SECTION 5.09. *Indemnities.* The Company agrees to indemnify, protect and save harmless the Trustee and the holders of Trust Certificates from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Trustee of title to the Trust Equipment or out of the use and operation thereof by the Company, any sublessee of the Company or any other person whatsoever during the period when title thereto remains in the Trustee. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of principal, premium, if any, and dividends on the Trust Certificates and the

conveyance of the Trust Equipment, as provided in Section 5.05 hereof, or the termination of this Agreement in any manner whatsoever.

The Company covenants and agrees to indemnify the Trustee and the holders of the Trust Certificates against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America, and of all the states and other jurisdictions in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, the Interstate Commerce Commission and any other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment or this Agreement, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; *provided, however*, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. *Events of Default.* The Company covenants and agrees that in case

(a) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment,

or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value (as of the date of conveyance) of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized, as certified to the Trustee (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) the Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 30 days after such appointment (whether or not subject to ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier, or

(e) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of

indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 30 days after such appointment (whether or not subject to ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an *Event of Default*), the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration or rentals payable pursuant to Section 5.04(B)(4) after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Overdue Interest Rate, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen, the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4) or (B)(5) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company, or in case of any other judicial proceedings relative to the Company, or to the creditors or property of the Company, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed, whether by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such claim or claims or rentals payable pursuant to Section 5.04(B)(4) after the date of such claim or claims) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee

on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party), the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. Remedies. In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and of any Affiliate of the Company where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01) may sell the same or any part thereof free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale for

cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of any of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of such Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of such Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to such Trust Equipment or any of it or any cause or right of action at law or in equity in respect of such Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 (other than dividends not then accrued or rentals payable pursuant to Section 5.04(B)(4) due after the date of the declaration referred to in Section 6.01), whether or not they shall have then matured. The foregoing provisions are subject to all applicable mandatory requirements of law.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by

the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee, its counsel or other agents in accordance with the provisions of this Agreement and (b) of the dividends and principal then due on the Trust Certificates, with interest on overdue dividends and principal at the Overdue Interest Rate to the extent legally enforceable, whether such Trust Certificates shall have been matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, or, if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals or of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default in the payment of any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4) or (B)(5), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due

and payable, all as in Section 6.01 provided, but before February 1, 1987, all arrears of rent (with interest at the Overdue Interest Rate upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, nor any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual

speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises of the Company or of any Affiliate approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. *Limitations on Suits by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceedings at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the holders of a majority in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.09; it being understood and intended, and being expressly covenanted by the holder of every Trust Certificate with every other holder and the Trustee, that no one or more holders of Trust Certificates shall have any right in any manner whatever, by virtue or by availing of any provision of this Agreement, to affect, disturb or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over or preference to any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certifi-

cates. For the protection and enforcement of the provisions of this Section 6.07, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.08. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and dividends on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, or to institute suit for the enforcement of payment due under the guaranty of the Company in respect of such Trust Certificate, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.09. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however*, that, subject to the provisions of Section 8.02, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not be lawfully taken.

SECTION 6.10. *Right of Court to Require Filing of Undertaking to Pay Costs.* All parties to this Agreement agree, and each holder of any Trust Certificate by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees,

against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 6.10 shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder of a Trust Certificate, or group of holders of the Trust Certificates, holding in the aggregate more than 10% in principal amount of the Trust Certificates outstanding, or to any suit instituted by any holder of a Trust Certificate for the enforcement of the payment of the principal of, or dividends on, any Trust Certificate on or after the due date expressed in such Trust Certificate or for enforcement of payments due under the guaranty of the Company in respect of such Trust Certificate.

SECTION 6.11. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the Overdue Interest Rate to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the Overdue Interest Rate to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon in substantially

the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President or one of its Vice Presidents. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be or had then been such officer.

SECTION 7.02. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that the Company shall have furnished the Trustee with an Opinion of Counsel to the effect that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 7.03. *Payment of Expenses; Recording.* The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company will, promptly after the execution and delivery of this Agreement and each supplement hereto, respectively, cause this Agreement or such supplement, as the case may be, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments, and file, register and record this Agreement and each supplement hereto in all other jurisdictions,

required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates hereunder and thereunder and reciting the details of such action.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trusts.* The Trustee hereby accepts the trust imposed upon it by this Agreement and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee; During Default; Prior to Default.* In case an Event of Default has occurred which has not been cured, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement; and

(d) no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 8.03. *Certain Rights of the Trustee.* Except as otherwise provided in Section 8.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, trust certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(d) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 8.04. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(B).

Except as otherwise provided in Section 8.02, the Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 8.05. *Funds May be Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and, if and to the extent agreed to between the Trustee and the Company and permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee will allow interest upon any

such moneys held by it in trust at the rate generally prevailing among Philadelphia banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default, and no event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash or cash deposited with it pursuant to Section 5.07 (hereinafter in this Section 8.05 called Replacement Funds) in Investment Securities, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including any premium and accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, rent received by it pursuant to Section 5.04(B)(1)(b).

If the Trustee has no knowledge of the occurrence of an Event of Default specified in Section 6.01(a) and if the Company shall not have notified the Trustee of the occurrence of any other Event of Default or of the occurrence of any event which with notice or lapse of time or both would constitute an Event of Default which shall then be continuing, the Company shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.05 and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.06. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Moneys Held in Trust.* Except as otherwise provided in Section 8.02, the Trustee shall not be

liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained, for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof) or for the guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

If the Company shall at any time act as Agency of the Trustee, it will, on or before each due date of the principal of or dividends on, any of the Trust Certificates, segregate and hold in trust for the benefit of the holders entitled thereto a sum sufficient to pay the principal or dividends so becoming due until such sums shall be paid to such holders or otherwise disposed of as herein provided, and will promptly notify the Trustee of its failure so to act.

Any Agency of the Trustee shall, other than the Trustee, execute and deliver to the Trustee an instrument in which such Agency shall agree with the Trustee, subject to the provisions of this Section, that such Agency will

(1) hold all sums held by it for the payment of principal of or dividends on Trust Certificates in trust for the benefit of the

holders entitled thereto until such sums shall be paid to such holders or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company in the making of any payment of principal or dividends; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Agency.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; *provided, however*, that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than 30 days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, The City of New York. In no event shall the holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.07. *Resignation and Removal; Appointment of Successor Trustee.* (a) The Trustee may at any time resign by giving written notice of resignation to the Company and by mailing notice of resignation to all holders of Trust Certificates at their last addresses appearing on the registry books. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written

instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so resigning and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Trustee may thereupon designate such successor trustee.

(b) In case at any time the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of its Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee.

(c) The provisions of subsections (a) and (b) of this Section 8.07 are subject, however, to the right of the holders of a majority in principal amount of the Trust Certificates then outstanding, by an instrument or instruments in writing, to appoint a successor trustee if such appointment be made within one year from the date of appointment of a successor trustee by the Company or the retiring Trustee.

(d) Every successor trustee shall be a bank or trust company organized under the laws of the United States of America or of the State of New York or the Commonwealth of Pennsylvania having a combined capital and surplus of at least \$50,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such successor trustee.

(e) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.07 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.08.

SECTION 8.08. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and there-

upon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.06, but upon payment of such amounts such trustee shall deliver to its successor all moneys, Investment Securities and other trust assets and papers then held by such trustee.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.08, the Company shall mail notice of the succession of such trustee hereunder to the holders of the Trust Certificates at their last addresses appearing on the registry books. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 8.09. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate-trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be a bank or trust company organized under the laws of the United States of America or of the State of New York or the Commonwealth of Pennsylvania having a combined capital and surplus of at least \$50,000,000, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by an instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, by an affidavit of a witness to such execution sworn to before any such notary or other such officer, by having the signature of any person executing such an instrument guaranteed by any bank, banker or trust company or by a member of the New York Stock Exchange, or in such other manner as the Trustee deems sufficient.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 9.02 as it shall deem necessary.

SECTION 9.03. *Trust Certificates Owned by Company Deemed Not Outstanding.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direc-

tion, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any Affiliate of the Company shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 9.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate, the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action, may, by filing written notice with the Trustee and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE TEN

MISCELLANEOUS

SECTION 10.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the holders of the Trust Certificates.

SECTION 10.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 10.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 10.04. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, One Market Street, San Francisco, California 94105, Attention of Vice President and Treasurer, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, at the address specified in the first paragraph of this Agreement, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.05. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 10.06. *Counterparts.* This Agreement has been simultaneously executed in several counterparts each of which shall be


deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 10.07. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 10.08. *Governing Law.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY

By 
Vice President

[CORPORATE SEAL]

Attest:

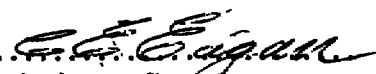

Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By 
Vice President and Treasurer

[CORPORATE SEAL]

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 3rd day of February, 1972, before me personally appeared Wm. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... *Judith Z. Pote*
Notary Public

[NOTARIAL SEAL]

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.,
My Commission Expires January 28, 1974

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 1st day of February, 1972, before me personally appeared ROBERT J. McLEAN, to me personally known, who, being by me duly sworn, says that he is a Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... *Arnold Olena*
Notary Public

[NOTARIAL SEAL]

ARNOLD OLENA
Notary Public, State of New York
No. 41-2953645
Qualified in Queens County
Commission Expires March 30, 1973

SCHEDULE A**DESCRIPTION OF TRUST EQUIPMENT**

<u>Number of Units</u>	<u>Description</u>	<u>Estimated Aggregate Cost of Acquisition</u>
33	3300 H.P., six axle, six motor, diesel locomotive units; General Electric Company, builder; lettered SP and numbered 8735 to 8767, both inclusive;	\$11,766,144
65	3600 H.P., six axle, six motor, diesel locomotive units; General Motors Corporation (Electro-Motive Division), builder; lettered SP and numbered 9177 to 9235 and 9241 to 9246, both inclusive;	23,254,286
26	1500 H.P., four axle, four motor, diesel switching locomotive units; General Motors Corporation (Electro-Motive Division), builder; lettered SP and numbered 2613 to 2638, both inclusive;	5,396,508
100	100-ton, 52 ft., solid bottom gondola cars; Thrall Car Manufacturing Co., builder; lettered SP and numbered 337600 to 337699, both inclusive;	1,523,100
209	70-ton, 62 ft., bulkhead flat cars; ACF Industries, Incorporated, builder; lettered SP and numbered 508691 to 508899, both inclusive;	3,416,105
916	70-ton, 50 ft. 7 in., single sheath box cars with hydra-cushion underframes; Gunderson, Inc., builder; lettered SP and numbered 240237 to 241152, both inclusive;	15,796,420
55	Caboose cars; International Ramco Inc. (International Car Co. Division), builder; lettered SP and numbered 1875 to 1929, both inclusive.	1,650,000
Estimated Total Cost		<u>\$62,802,563</u>